Public Works (1908) Department.

G.O., No 33 – I

DATED 21–1–1908.

23.1.08

$\frac{90}{4}$ copies G.C.

[Despatch Abstract.]

Suit

Pros: of the Board of Revenue (L.R) reporting the result of the appeal ~~ruin~~ preferred by Govt. against the decision of the District Munsif of Periyakulam in regarding ~~connection with~~ a water dispute, recorded with remarks.

[P. W. D. 5,000—8-7-07.]

Indexed.

CS/~~20~~/01/28

Asnt 21-1-08

T.S. 23/1/08

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

IRRIGATION.

Government of Madras.

PUBLIC WORKS DEPARTMENT.

Recd. } 1908. *Enclosures*

Regd. *Spare copies*

G.O., No. 33 I., 21st January 1908.

Suit

Proceedings of the Board of Revenue (Land Revenue) reporting the result of the appeal preferred by Government against the decision of the District Munsif of Periyakulam regarding a water dispute, recorded with remarks.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

Read—the following papers :—

I

G.O., No. 758 I., dated 23rd August 1905.
„ „ 712 I. „ 28th June 1906.

II

Memorandum No. 3564, dated 13th September 1907.

With reference to G.O., No. 712 I., dated 28th June 1906, sanctioning an appeal against the judgment of the District Munsif of Periyakulam in O.S. No. 111 of 1905, the Board of Revenue (Land Revenue) is requested to state whether the Collector of Madura has reported the result of the appeal.

(By Order.)

T. W. S. Smyth,
Asst. Chief Engineer for Irrigation.

To the Board of Revenue (Land Revenue).

III

Proceedings of the Board of Revenue (Land Revenue), R. No. 2393, dated 22nd October 1907.

Read—the following paper :—

Letter—from H. F. W. Gillman, Esq., I.C.S., Collector of Madura.
To—the Secretary to the Commissioners of Land Revenue.
Dated—the 7th October 1907.
No.—R. Dis. 880-Rev./07.

Referring to the G.O., No. 712 I., dated 28th June 1906, on the appeal against the judgment of the District Munsif, Periyakulam, in O.S. No. 111 of 1905, on the Board's reference A. No. 416, dated 22nd June 1906, and No. 4005/07-1, dated 19th September 1907, I have the honour to submit a copy of letter No. 810-S, dated 26th September 1907, received from the Government Pleader, Madura.

2. The Government Pleader reports that in the appeal (A.S. No. 298/06 on the file of the Sub-Court, Madura West), judgment has been pronounced on the 26th ultimo expunging from the Lower Court's decree the declaration that the plaintiffs are not bound to submit to the turn system, but otherwise confirming it.

3. Copies of the judgment and decree have not yet been received from the Government Pleader; and on their receipt a further report will be submitted in the matter.

Enclosure.

Letter—from the Government Pleader, Madura.
To—the Collector of Madura.
Dated—the 26th September 1907.
No.—810-S.

Judgment has been pronounced to-day in A.S. No. 298 of 1906 on the file of the Sub-Judge, Madura West, expunging from the decree the declaration that the plaintiffs are not bound to submit to the turn system but otherwise confirming the decree of the Lower Court.

2. I shall obtain a public copy of the judgment and decree and forward them to you in due course with my remarks.

Resolution—R. No. 2393, *dated* 22*nd October* 1907.

Forwarded to the Chief Engineer for Irrigation, with reference to his memorandum No. 3564, dated 13th September 1907.

(True Extract.)

A. R. Loftus-Tottenham,
Secretary.

To the Chief Engineer for Irrigation.

IV

Memorandum No. 4284, dated 2nd November 1907.

The Board is requested to forward copies of the judgment and decree when received.

(By Order.)

T. W. S. Smyth,
Asst. Chief Engineer for Irrigation.

To the Board of Revenue (Land Revenue).

V

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 151, dated 17th January 1908.

Read—the following paper :—

Letter—from H. F. W. Gillman, Esq., I.C.S., Collector of Madura.
To—the Secretary to the Commissioners of Land Revenue.
Dated—the 7th December 1907.
No.—R.O.C. 4731-Gl.

In continuation of this office R. Dis. No. 880-Rev. of 1907, dated 7th October 1907, I have the honour to forward herewith certified copies of judgment and decree in A.S. No. 298 of 1906 on the file of the District Court, Madura, and to report as follows :—

2. Murthi Naik and two others of Allinagram village, Periyakulam taluk, instituted a suit against Government (O.S. No. 111 of 1905 on the file of the District Munsif's Court, Periyakulam) for a declaration that they were entitled to the free use of all water passing through a sluice in Panasalathukhal at all times for the

irrigation of 9·18 acres owned by them in that village ; and that the order of the Tahsildar of Periyakulam, dated 19th January 1905, directing that the plaintiffs should close the sluice for six days in a week and take water to their lands for only one day, was null and void. The contentions on behalf of Government were—

(1) that the plaintiffs had a right to only as much water through the sluice as was necessary for the cultivation of the plaint lands ;

(2) that they were not always entitled to the free use of the water passing through the channel ;

(3) that there was sufficient supply of water for the plaintiffs' lands ;

(4) that the Tahsildar's order based upon the opinion of the Executive Engineer was legal and valid ;

(5) that the plaintiffs were not therefore entitled to any relief ; and

(6) that the suit was bad for want of notice under section 424, C.P.C.

The District Munsif of Periyakulam gave judgment in favour of the plaintiffs and ordered the defendant (Government) to pay the cost of the plaintiffs. The declarations granted by the District Munsif were—

(1) that the order of the Tahsildar that the plaintiffs should close the sluice for six days in the week and take water only one day in the week was illegal ;

(2) that the plaintiffs were not bound by any turn system ;

(3) that the plaintiffs are entitled to take the water of the channel through the sluice for the full agricultural needs of their lands ; and

(4) that the notice of suit sent by the plaintiffs was a proper notice.

3. Against this decision, an appeal was instituted by Government (A.S. No. 298 of 1906 on the file of the Sub-Judge, Madura West), and as already reported in paragraph 2 of this office R. Dis. No. 880-Rev./07 referred to above, the Sub-Judge, expunged from the Lower Court's judgment the second declaration and confirmed the judgment in other respects, and directed the appellant (Government) to pay the costs of the respondents.

4. The Government Pleader states that, in regard to the first declaration granted by the District Munsif, he argued before the Sub-Judge that the order having been made for the particular period when there was scarcity of water, was a temporary one, and that, therefore, there was no meaning in granting a declaration whose force was spent. The Sub-Judge, however, held that it was not one of the grounds of appeal and that there was nothing to show that the order was a temporary one. The Government Pleader considers that the facts * and circumstances of the case show that the order was only a temporary one ; and that as it was never the contention of anybody that the Tahsildar ordered the plaintiffs to have water for only one day in the week *throughout the year*, and that as the Sub-Judge concedes that the particular order sought to be set aside was not filed in the case, the point may be taken up if a second appeal is resolved upon.

* Please *vide* this office R.O.C. No. 1139, dated 12th July 1905, disposed of in G.O., No. 758 I., dated 23rd August 1905, Public Works.

5. In regard to the third declaration, the Sub-Judge relies on paragraph 2 of the written statement filed by Government in the original suit, viz., that the plaintiffs have a right to as much water as is necessary for the cultivation of the plaint lands. The Government Pleader states that the Sub-Judge seems to be right so far as he bases his conclusion on the admission in the written statement, though he does not agree with him (Sub-Judge) on his application of the law of riparian rights to the present case. He is of opinion that there are no circumstances in this case to show that riparian rights were intended to be conferred on the plaintiffs and that the Sub-Judge is not right in his view that, as upper riparian owners, the plaintiffs will have a preferential right to irrigate their 9 acres to the detriment of the 260 acres under the tank.

6. In regard to the second declaration of the District Munsif which has been expunged by the Sub-Judge, the Government Pleader states that he regards it as a very important point gained in favour of Government as it will enable them to prevent waste of water by imposing a turn system as will just satisfy the plaintiffs' agricultural needs.

7. I am not in favour of preferring a second appeal to the High Court, as it is not likely that the Sub-Judge's finding would be substantially modified. The Tahsildar's order allowing water to the plaint land on only one day in the week was too illiberal and cannot be supported and has put us at a great disadvantage in the defence of the case. The best course to adopt will, I think, be to abandon further litigation and after due enquiry fix a reasonable turn system for the plaint lands in relation to the lands under the tank. If, however, a second appeal is decided on by the Board, it will have to be filed before 19th January 1908, and translations of exhibits E, II, VI, VIII, VIII (*a*) and IX and exhibits I, VII and the depositions of plaintiffs' third witness and defendant's witnesses Nos. 8 and 9 will have to be printed for reference. The usual statement of dates is appended below.

8. The Government Pleader claims the full regulation fee of Rs. 100 in this case, as Government have succeeded in the important point of imposing the turn system and as the appeal involved several important questions of law and was adjourned eight times. The appeal, having substantially failed, he is strictly entitled to only half the regulation fee, but in the circumstances stated above, I recommend that the full regulation fee may be allowed to him under Board's Standing Order No. 97, paragraph 2. A statement of unusual charges is enclosed.

9. Connected papers accompany as per list—

Date of judgment and decree.	Date of application for copies.	Date on which copies were ready for delivery to vakil.	Date of receipt of same by Collector.	Date of Collector's letter.	Date on which time for appeal expires.
26th September 1907.	26th September 1907.	23rd October 1907.	6th November 1907.	7th December 1907.	19th January 1908.

Resolution—Mis. No. 151, *dated* 17*th January* 1908.

Submitted to Government with reference to their memorandum No. 4284, dated 2nd November 1907.

2. The Board agrees with the Collector that there is no use in preferring a second appeal to the High Court. The Sub-Judge has set aside the declaration in the District Munsif's decree that the plaintiffs are not bound to submit to any turn system. The points in the decree which are adverse to Government are (1) that the plaintiffs are entitled to the full supply necessary for the irrigation of their lands, and (2) that a supply limited to one day in the week is not sufficient. The first point was admitted in the written statement filed on behalf of Government which apparently was badly worded though in their Order No. 758 I., dated 23rd August 1905, Government indicated how the original draft should be amended. The second conclusion results from the finding on the facts, and the Collector apparently accepts it as correct. The effect of the litigation is thus merely to affirm what has been or is admitted, and in the face of the admissions the Board does not consider that the High Court can be moved in second appeal to go into the question whether plaintiffs as upper riparian proprietors have preferential rights or whether, in years of scarcity, Government have the right to distribute the supply to the advantage of the majority of ryots.

3. If, however, Government consider that a second appeal should be filed, the Board requests that the necessary instructions may be issued to the Government Pleader direct. The appeal time expires on the 19th instant.

4. The Board supports the Collector's recommendation that the full regulation fee may be paid to the vakil who conducted the appeal on behalf of Government before the Sub-Judge.

(True Extract.)

A. R. Loftus-Tottenham,
Secretary.

To the Secretary to Government, Public Works Department, with enclosures.

Order—No. 33 I., dated 21st January 1908.

Recorded.

2. The Government agree with the Board of Revenue that a second appeal need not be preferred.

3. The payment of the full regulation fee of Rs. 100 to the Government Pleader is sanctioned.

4. The Board of Revenue (Land Revenue) is requested to call upon the Collector to explain the circumstances under which the draft written statement was not modified in accordance with paragraph 2 of G.O., No. 758 I., dated 23rd August 1905.

(True Extract.)

Under Secretary to Government, P.W.D.,
Irrigation Branch.

To the Board of Revenue (Land Revenue) with enclosures returned.
,, Chief Engineer for Irrigation.
,, Superintending Engineer, VI Circle.

Copy to the Revenue Department.

1,000—8-7-07. P. W. D., IRRIGATION BRANCH.

Subject: —

NOTES

CONNECTED WITH

G.O., No. 33 I., dated 21. 1. 1908.

Notes edited.

Initials of the Clerk.

Suit!

P.W.D., Irrigation.

D.I.

A draft order is submitted for approval. It may be forwarded to "Revenue" for acceptance before issue.

[signature] 18.1.08. [signature] 18/1/08

The date for preferring a second appeal is tomorrow and in view of opinion expressed by Collr. & B. of R. ~~Irrwork~~ will not press for one. Two points ~~appear to~~ are brought to notice of revenue. (1) The failure to modify the written statement of defendants as directed in G.O. No 7581 d/23-8-05. There was plenty of time to ~~do so~~ the suit being heard in ~~Jan 06~~ Dec 05.

(2) The finding of the Sub Judge that the plaintiff-respondents have riparian rights. This ~~app~~ is another instance which shows the necessity for an irrigation act.

A third point may be noticed as a moral i.e. the folly of allowing direct irrigation from a supply channel to a tank.

[signature] 18.1.08

To Rev. for acceptance of draft order

Sec 18/1/08

UNDER SECY TO GOVT. 18 JAN 08 REVENUE DEPT.

Irrign. u.o. 26 D / 18.1.08

(with 1 bundle of depositions &c)

2

to We may agree that a second appeal is not advisable.

2. It may be suggested to PWD I. to add a para. to the G.O. ~~call on~~ the Board to obtain the Coll's explanation of the omission to amend the draft W.S. in accordance with para. 2 of G.O. No 758 I d. 23 Aug 1905. That order is shown to have been desp'd to the Collr. on 23 Aug 05, & tho' the W.S. had to be filed before the 5 Sept. 05, there was time either to correct it before filing ~~file~~, or to put in an amended Statement.

AG
18.1.08

PWD I U.O.

P.W.D. Irrigation.

85

Recd. } 18.1.08.
Regd. }

Despd. Friend 6. ... 18/1/08

D I
I.

Para 4 has been added in pencil to the draft order in the sense of the Rev. Secty's suggestion. Submitted that the draft order may issue.

Rev. U.O. no 85C/08 18.1.08.

Rev
20/1/08

[illegible]
20/1/08

Issue with addition

[illegible] 20/1/08

PUBLIC WORKS DEPARTMENT,

IRRIGATION BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

again
READ the following

G.O., No.758-I, dated 23-8-05.

,, ,, 712-I, dated 28-6-06.

Read also -

p 1 c.f. To the Board of Revenue (L.R.) No.3564 dated 13-9-07.

2-3 " From ---------------do--------- No.2393 R, dated 22-10-07.

4 " To ---------------do------------4284 dated 2-11-07.

5-12 " From ---------------do------------ 151 Mis., dated 17-1-08.

Order. No 33-I d/ 21-1-08

Recorded.

2. The Government agree with the Board of Revenue that a second appeal need not be preferred.

3. The payment of the full regulation fee of ₨100 to the Government Pleader is sanctioned.

4. The Board of Rev (L.R) is requested to call upon the Collector to explain the circumstances under which the draft written statement was not modified in accordance with para 2 of GO no. 758 I d 23.8.05.

18/1/08.

18/1/08

To

The Board of Rev.(L.R.) with Enclos.returned.

,, Chief Engineer for Irrign.

,, Supg. Engineer, VI Circle.

Copy to the Rev.Dept.

DESPATCHED
11 FEB 1908

18.1.08

1080

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